

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

MARK DERAMO,

Plaintiff,

v.

AMERICAN AIRLINES GROUP, INC.,

Defendant.

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Civil Action No. 4:22-cv-575-O-BP

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court are U.S. Magistrate Judge Hal Ray's Findings, Conclusions, and Recommendation ("FCR", ECF No. 19), issued December 1, 2022; and Plaintiff's Opposition to the Recommendation to Dismiss with Prejudice (Objection, ECF No. 22), filed December 20, 2022. Also before the Court is Plaintiff's Amended Complaint (ECF No. 20), which Plaintiff filed on December 6, 2022.

Though objections to a magistrate judge's recommendation is due within fourteen days, the Court will consider the objection timely given that Plaintiff, who is pro se, filed his response via U.S. Postal Service. Because Plaintiff did not seek permission from the Court to amend his Complaint as required by Federal Rule of Civil Procedure 15 and prior Order (ECF No. 13), the undersigned shall not consider Plaintiff's Amended Complaint. FED. R. CIV. P. 15(a)(2).

Magistrate Judge Ray's FCR recommends that the undersigned dismiss with prejudice Plaintiff's Complaint for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B). Magistrate Judge Ray found that, even after filing a verified response to the Court's screening questionnaire, Plaintiff had "plead[] his best case" for a potential claim under the Americans with Disabilities Act and that no subsequent amendments to his Complaint could bring about an actionable claim

under that statute. FCR 7–8. The Court agrees and is not persuaded by Plaintiff’s objection that the FCR “fail[s] to correctly state the facts which plaintiff alleged.” Objection 1, ECF No. 22.

Having compared Plaintiff’s statement of the facts in his Complaint, responses to the Court’s questionnaire, and his Opposition to the FCR to Judge Ray’s articulation of the facts as set forth in the FCR, the undersigned disagrees that the FCR misstated the facts. Accepting the facts as Plaintiff alleges them (i.e., that American Airlines “regarded” Plaintiff as having a disability by requiring him—and all other passengers onboard—to wear a face covering), the undersigned District Judge agrees with the Magistrate Judge’s findings that Plaintiff “has not alleged sufficient facts to show that he is entitled to recover on his discrimination or retaliation claims under Title III of the ADA.” FCR 8, ECF No. 19.

As a final matter, Plaintiff objects to the FCR on the grounds that Judge Ray recommends dismissal with prejudice pursuant to 28 U.S.C. § 1915, a statutory provision Plaintiff contends applies only to prisoners and is therefore inapplicable to his case. Objection 1, ECF No. 22. However, the Fifth Circuit has indicated that § 1915 does not a provision that applies exclusively to prisoners. *See Haynes v. Scott*, 116 F.3d 137, 139 (5th Cir. 1997) (“There is no indication in the statute or the legislative history of the [Prison Litigation Reform Act] that Congress meant to curb [*in forma pauperis*] suits by nonprisoners.”).

Thus, after reviewing all relevant matters of record in this case, including the Findings, Conclusions, and Recommendation of the United States Magistrate Judge and any objections thereto, in accordance with 28 U.S.C. § 636(b)(1), the undersigned District Judge believes that the Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court.

Accordingly, it is **ORDERED** that this case is **DISMISSED WITH PREJUDICE**.

SO ORDERED on this **23rd day of December, 2022.**


Reed O'Connor
UNITED STATES DISTRICT JUDGE